



# Corruption and Crime Commission monitoring of agency investigations

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## The Corruption and Crime Commission's oversight function

- [1] The Corruption and Crime Commission (the Commission) and the Public Sector Commission are to help public authorities to prevent, identify and deal effectively with misconduct. To comply with this direction, the Commission has a number of functions. This report concentrates on its powers to monitor and review the actions of a public authority in dealing with misconduct.
- [2] Misconduct prevention and education in the public sector is the responsibility of the Public Sector Commission (PSC).<sup>1</sup> The Commission retains the prevention and education function only for police misconduct.
- [3] The Commission's oversight powers include:
- assessment of allegations;
  - referral of an allegation to a public authority for action and to report the result to the Commission;
  - referral and monitoring of actions taken by a public authority into allegations of serious misconduct;
  - conducting investigations, either alone or co-operatively with a public authority;
  - Making recommendations;
  - Reporting on an investigation; and
  - Inspections of agencies empowered to conduct covert operations.
- [4] If in the course of performing its other functions, the Commission identifies a special need to increase the capacity of authorities generally, or the capacity of a particular public authority, to prevent or combat misconduct, the Commission can assist authorities to increase that capacity.<sup>2</sup>

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<sup>1</sup> *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 45A.

<sup>2</sup> CCM Act s 21AB.

## The Oversight Team

- [5] To carry out its monitoring and review powers, the Commission has created a specialised section known as the Oversight Team. The Oversight Team is part of the Assessment, Strategy and Development Directorate (ASD) and currently comprises one L7 Manager, three L6 Senior Oversight Officers and one L4 Oversight Officer.
- [6] The Oversight Team exercises the Commission's powers under the *Corruption, Crime and Misconduct Act 2003* (CCM Act) ss 40; 41.
- [7] If the Commission refers an allegation to a public authority for action, that authority must provide the Commission with a detailed report of the action taken. The Commission seeks updates on the progress of action taken. The Commission refers to this function as 'monitor'.
- [8] The Commission may conduct a full review of the way a public authority has dealt with allegations of serious misconduct. Once the authority has completed its investigation, the Oversight Team considers whether the actions undertaken by the authority were adequate and whether the conclusions reached by the authority, on the available evidence, were open to be made in the sense that they are not clearly wrong or unreasonable.<sup>3</sup>
- [9] Monitor and review are two ways in which the Commission builds public sector capacity and assists public authorities to identify, respond to, and prevent serious misconduct. The process is outlined below.
- [10] The Oversight Team regularly attends liaison meetings with the public authority along with other representatives from the ASD Directorate. Meeting with authorities range from monthly (WA Police Force) to quarterly (other larger agencies such as Department of Justice) to ad hoc, when necessary.
- [11] The public sector has more than 100 public authorities not inclusive of local government. The Commission does not receive regular notifications from all them. Consequently ASD contacts authorities who do not regularly make reports in order to engage with them. This provides an opportunity to remind authorities of their notifying and reporting obligations.

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<sup>3</sup> House, R [1936] HCA 30; 55 CLR 499

## The Commission's monitor functions and capability (s 40)

### Allegations of serious misconduct referral

- [12] Following assessment of an allegation of serious misconduct, the Commission has a number of options.
- [13] The Commission must balance its resources to fulfil its functions most effectively. Investigations are expensive in time and resources. The decision to hold an investigation is usually made for more serious or complex matters. Monitor and review will often accomplish a similar outcome bringing attention to the authority and the public, an aspect of misconduct from which lessons may be learnt. Monitor and review also squarely engages the public authority in dealing with misconduct. Misconduct prevention and investigation are principally the responsibility of the head of a public authority.
- [14] Most allegation(s) of serious misconduct are referred to a public authority for action, usually the Director General or Chief Executive (CE).
- [15] When allegations of misconduct are referred to a public authority for action, the Commission is concerned as to whether they will be dealt with appropriately.
- [16] The Commission recommends the authority commence taking action within six months on every referred allegation. The Commission requires the authority to provide a detailed report of the actions taken.<sup>4</sup> At the six month mark, the Commission will request an update from the authority as to the action taken.
- [17] The authority is responsible for deciding what action it takes into allegations referred to it. For example the public authority may appoint an external investigator. A public authority may set standards for the skill levels for investigators. A public authority may have an integrity unit to carry out investigations.

### Updates of authority action taken

- [18] The timeframe for action to be completed is for the authority to assess and determine. The Commission acknowledges the complexities of investigations and is reluctant to impose milestones unless a public authority is manifestly tardy.

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<sup>4</sup> CCM Act ss 37(2)(b) and 40.

- [19] Every six months, the Commission requests an update for all outstanding allegations of serious misconduct referred for action.<sup>5</sup> The process of reconciling outstanding matters is conducted by an Oversight Officer.
- [20] Obtaining status updates forms part of the Commission's monitoring of actions taken by public authorities. It assists the Commission in identifying any capacity concerns in action or inaction taken by authorities.
- [21] If an authority does not provide an update or outcome for allegation(s) referred, the Commission will escalate its concerns by:
- Liaison meeting with authority representatives;
  - Meeting at the executive level; or
  - Issuing of a written notice directing the authority to give the Commission a detailed report on the action the authority has taken in relation to the allegation and if action recommended by the Commission has not been taken, the reasons for not so taking the action.<sup>6</sup>

#### **Receipt of authority closure report**

- [22] Upon receipt of a public authority report of action taken, the Oversight Officer considers the information provided. This is limited to consideration of information provided by the authority.
- [23] The authority report details actions and findings. The reports are usually endorsed by the head of the authority or high level positions within integrity or human resources directorates. The Commission considers this an assurance by an authority that an allegation(s) has been properly addressed.
- [24] On 1 July 2021, the Oversight Team implemented significant improvements in the receipt and closure of authority actions taken, called the 'closure process'.
- [25] The closure process provides the Commission with a level of assurance into the adequacy of action taken by authorities. The Oversight Officer considers the adequacy of action taken by the authority based on the information provided. Any concerns identified are recorded across five key areas:
- quality of information;

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<sup>5</sup> CCM Act s 40.

<sup>6</sup> CCM Act s 40(3)(a) and (b).

- authority capacity (action taken);
- procedural fairness;
- timeliness; and
- systemic/cultural concerns.

[26] As more data becomes available, the intelligence gathered will be used to assist the Commission to identify areas of concern, and inform the future allocation of Commission resources to authorities considered most at risk.

[27] Of the 7190 allegations identified in the 2020/21 financial year, the Commission referred 1860 allegations for action.<sup>7</sup>

Assessment decision	2019-20		2020-21	
	No	%	No	%
Out of jurisdiction <sup>5</sup>	n/a	n/a	413	5.7%
Take no further action – s 33(1)(d)	4,154	72.3%	4,793	66.7%
Refer to an appropriate authority (AA) or independent agency (IA) for action – s 33(1)(c)	1,450	25.3%	1,860	25.9%
- Refer to AA – monitor for outcome	1,398	24.3%	1,717	23.9%
- Refer to AA – monitor for review	50	0.9%	142	2.0%
- Refer to IA	2	0.03%	1	0.01%
Commission to investigate (either independently or in cooperation with a public authority)	99	1.7%	47	0.7%
- Investigate independently – s 33(1)(a)	38	0.7%	21	0.3%
- Investigate in cooperation with public authority – s 33(1)(b)	61	1.1%	26	0.4%
Pending the outcome of a Commission preliminary investigation – s 32(2)	36	0.6%	60	0.8%
Pending a decision by the Commission's Operations Committee	4	0.1%	17	0.2%
<b>TOTAL</b>	<b>5,743</b>	<b>100%</b>	<b>7,190</b>	<b>100%</b>

[28] Despite the volume of allegations referred, the Commission will prioritise allocation of resources when concerns are identified and noted by the Oversight Officer in the actions taken by an authority.

<sup>7</sup> CCM Act ss 33(1)(c), 37 and 40.

[29] If concerns are identified, the Oversight Manager is informed and can consider the following courses of action:

- Request a meeting with the authority to discuss the issues identified and to provide informal feedback to the authority; or
- Draft a Recommendation Amendment Report (RAR) to the Operations Committee to empower the Oversight Team to conduct a full review of the action taken,<sup>8</sup> and upon conclusion provide formal, written feedback to the head of the authority.

[30] The Operations Committee is comprised of the Commission's executive group. The Committee provides advice to the Commissioner for the efficient and effective deployment of operational resources.

[31] Below are two case examples where concerns were identified during the closure process by the Oversight Officer and further action was taken by the Oversight Team.

***Case example: Monitoring of action taken by a local government***

[32] In January 2021, the Commission referred an allegation of serious misconduct to the Chief Executive Officer (CEO) of a local government for action and outcome. The allegation concerned an employee corruptly using their position to recruit a family member.

[33] In July 2021, the Commission received the outcome report. An investigation had been completed by an external investigator and subsequently endorsed by the CEO. An outcome of not sustained was recorded.

[34] The Commission identified concerns in the actions taken (capacity) by the local government. Specifically, the evidence available revealed the subject officer admitted they provided confidential information for an upcoming job to their family member. This did not match the outcome endorsed by the CEO. Additionally, the further allegation of serious misconduct, 'disclosure of official information' by the subject officer emailing the recruitment documentation, was not identified as serious misconduct nor notified to the Commission.

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<sup>8</sup> CCM Act s 41.



- [35] In September 2021, the Oversight Team met with representatives of the local government to provide feedback as to the concerns identified during the closure process.
- [36] As a result, the Commission gained a greater understanding of the operational environment and capacity of the local government. An update was provided that the subject officer had been issued a warning, a review of recruitment practices was being undertaken and the local government's new CEO was improving the integrity unit.
- [37] The meeting also provided an opportunity for the Commission to remind the local government of its obligations in notifying the Commission of any additional allegations of serious misconduct. As a result, the local government retrospectively notified the Commission of the disclosure of official information allegation later that month.
- [38] The Commission will continue to assess how that local government manages serious misconduct.

***Case example: Monitoring of action taken by the WA Police Force***

- [39] In March 2021, the Commission referred an allegation of police misconduct to the WA Police Force for action and outcome. The allegations related to alleged excessive use of force by a police officer.
- [40] In June 2021, the Commission received the WA Police Force investigation report. The Oversight team identified concerns in the actions taken by the WA Police Force.
- [41] On the evidence available, including body worn camera (BWC) footage, it was unclear how the investigation determined the level of force was necessary in the circumstances, particularly noting where the force was applied on the civilian's body.
- [42] Based on the severity of concerns identified, the Oversight Team referred the matter to the Operations Committee recommending a full review of this matter be undertaken by the Commission.<sup>9</sup>
- [43] The Operations Committee subsequently empowered the Oversight Team to conduct a review of the actions taken. The review will enable the Commission to

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<sup>9</sup> CCM Act s 41

conduct a thorough analysis of all the evidence relied upon by the WA Police Force in reaching its conclusion.

[44] The review is ongoing.

### **The Commission's review functions and capability (s 41)**

[45] The Commission can review the way a public authority has dealt with allegations of serious misconduct.<sup>10</sup>

[46] The review considers whether the actions undertaken by the authority were adequate and whether the conclusions reached by the authority, and the disciplinary response (where applicable), were open to be made on the available evidence.

[47] A Senior Oversight Officer conducts the review. The review is comprehensive and considers all supporting documentation and evidence relied upon by the authority.

[48] The review is a multi-staged process.

[49] A report is drafted and presented to the Operations Committee and Commissioner for endorsement of the review conclusions and any recommendations made. If the report is adverse a draft may be sent to the public authority for its comment.

[50] The review culminates in a closure report provided to the head of the public authority. Closure reports are endorsed by the Commissioner and articulate the Commission's review conclusions and observations in relation to whether or not the authority actions and conclusions were considered adequate and appropriate.

[51] The closure report gives the Commission an opportunity to provide formal feedback to the authority for the purpose of improving its capacity in responding to and managing serious misconduct risks.

[52] Where appropriate, the closure report may include formal recommendations back to the authority. If that occurs, in 12 months' time, the Oversight Team

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<sup>10</sup> Ibid

reviews the action, if any, taken by the public authority in response to a recommendation.

[53] If a review identifies serious misconduct risks that are of public interest, the Commission may decide to table a report in parliament as an alternative to the closure report.

[54] In the 2020/21 financial year, the Oversight Team completed 21 reviews of authority action taken, of which:

- two review reports were tabled in Parliament;<sup>11</sup>
- 17 review reports (concerning 18 reviews) were provided to the head of the authority involved and included two formal recommendations; and
- one review was discontinued and amended via a RAR to monitor for action and outcome only.

### **Active Oversight (s 40 and 41)**

[55] The Commission's resources are limited and must be allocated effectively. Investigations are resource intensive. Therefore, the Commission must consider and prioritise the allocation of resources.

[56] For more serious matters or if the Commission holds concerns in the capacity of an authority to take appropriate action, the Commission may refer the allegations to the authority for action, subject to 'active oversight'.

[57] Active oversight combines the two Commission functions of monitor and review and is a more intensive and structured monitor phase, with greater levels of engagement with the public authority, visibility and continual assessment.

[58] Following referral of an allegation for active oversight, the Oversight Team meet with representatives from the authority. The purpose of the meeting is to explain the basis for Commission interest in the matter, discuss any identified concerns and detail the activities and schedule associated with the active oversight process.

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<sup>11</sup> Corruption and Crime Commission, *Review of an investigation by Western Power into serious misconduct*, 23 September 2020 and *Review of an investigation by Water Corporation into serious misconduct allegations in procurement*, 28 January 2021.

- [59] After the initial meeting, the Oversight Officer requests monthly updates for the progress of all matters subject to monitor and review. These regular progress reports allow the Commission to track the progress and direction of authority action into the allegation/s.
- [60] The heightened levels of engagement with the authority provides opportunities for the Oversight Team to share observations and identify areas of concern in relation to the direction and progress of action being taken. However, the Commission's role in active monitoring is not to direct an authority as to what action it should take. This remains the responsibility of the authority.
- [61] Should any significant concerns be identified in the authority action, at any time the Commission can reconsider its level of involvement. This involves the Oversight Team preparing a written submission in the form of a RAR.
- [62] The RAR may recommend the Commission change its initial decision and undertake an independent or cooperative investigation of the matter. Alternatively, it may recommend the Commission change its decision to refer an allegation back to an authority for outcome only. This is usually reserved for matters that end up in lengthy criminal or Industrial Relation proceedings.
- [63] Most concerns can be addressed adequately through the Oversight Team's intensive engagement and consultation with the authority as part of active oversight.
- [64] Upon receipt of the authority investigation report, the Senior Oversight Officer conducts a review in accordance with the processes previously outlined.
- [65] In the 2020/21 financial year, the Commission referred 142 allegations of serious misconduct to appropriate authorities for action, subject to monitor and review. This represents a 184% increase when compared to the previous financial year 2019/20. This significant increase is attributed to the streamlining of Commission processes to consider a number of allegations within the one review, called by the Commission a thematic review. A thematic review will typically examine a number of allegations of similar circumstances to see whether there is a pattern of misconduct or a lack of misconduct mitigation.
- [66] A summary of a recent review which considered the actions taken by the authority as inadequate demonstrates how change was effected specifically in response to the Commission's engagement and review.

***Case example: Review of WA Police Force actions into allegations involving the neglect of duty for at risk persons.***

- [67] In May 2020, the WA Police Force notified the Commission of two reportable deaths that occurred shortly after the deceased had interacted with police officers. The matters were separate and both contained allegations of neglect of duty.
- [68] In August 2020 the Commission referred both matters back to the WA Police Force for action, subject to active oversight.
- [69] Days after the referral, the WA Police Force advised that both matters had been finalised and the reports were available for the Commission to review.
- [70] In each case, the WA Police Force investigations concluded that no serious misconduct had occurred.
- [71] The Commission reviewed the information available including investigation reports, interviews and BWC footage. The review identified concerns and raised questions as to the conclusions reached.
- [72] In the Commission's opinion, the evidence relied upon did not match the final outcome. It was apparent there were breaches of policy, but no sustained findings were recorded.
- [73] In October 2020, the Oversight Team met with representatives from the WA Police Force Professional Standards Division Portfolio to discuss the concerns.
- [74] In November 2020, the WA Police Force provided the Commission with additional information. The information supported the original conclusions reached by WA Police Force
- [75] The Commission reviewed the additional information and determined it did not alleviate the concerns held by the Commission. The WA Police Force were again informed of this.
- [76] After a number of subsequent engagements, the WA Police Force advised that the holdings for some of the subject officers had been amended to reflect a sustained finding.

- [77] In considering the broader misconduct risks associated with the training and support of frontline officers in dealing with at risk persons, the Commission made a formal recommendation to the WA Police Force for wider change.
- [78] The Oversight Team will conduct a review of WA Police Force action taken on the recommendations in 12 months' time.
- [79] The active oversight of these two matters not only demonstrates how the process influenced and effected change in these outcomes by the WA Police Force, but the recommendations made will encourage continued change across the WA Police Force in an effort to prevent similar incidents of police misconduct.

## Conclusion

- [80] The Oversight Team assists the Commission in fulfilling its Oversight role through the monitoring and review of authority actions taken into allegations of serious misconduct.
- [81] Significant changes implemented since July 2021 have improved the Commission's ability to effectively monitor and identify any concerns in action taken by authorities.
- [82] The Commission will continuously assess and review the effectiveness of changes implemented.
- [83] Public authorities remain primarily responsible for managing and preventing serious misconduct risks.